

PART 575—RECRUITMENT AND RELOCATION BONUSES, RETENTION ALLOWANCES, SUPERVISORY DIFFERENTIALS, AND EXTENDED ASSIGNMENT INCENTIVES

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SOURCE: 56 FR 12838, Mar. 28, 1991, unless otherwise noted.

Subpart A—Recruitment Bonuses

§ 575.101 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a recruitment bonus of up to 25 percent of the annual rate of basic pay to a newly appointed employee, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position.

[60 FR 33325, June 28, 1995]

§ 575.102 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a recruitment bonus to an employee who is newly appointed to—

(1) A General Schedule position paid under 5 U.S.C. 5332;

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(4) A position as a law enforcement officer, as defined in § 550.103 of this chapter.

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate); or

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a recruitment bonus to—

(1) The head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(2) An employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

(c) The head of an Executive agency may request that OPM authorize the payment of a recruitment bonus to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.

(d) When OPM finds that an agency is not paying recruitment bonuses in conformance with the agency's recruitment bonus plan and the criteria established under § 575.104 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a recruitment bonus to such employees; or

(2) Revoke or suspend the authority granted to the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM approval be secured before paying a recruitment bonus to such employees.

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37398, Aug. 19, 1992; 58 FR 3201, Jan. 8, 1993; 58 FR 65537, Dec. 15, 1993; 64 FR 69181, Dec. 10, 1999; 66 FR 37883, July 20, 2001]

§ 575.103 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102.

Commuting area has the meaning given that term in § 575.203.

Employee means—

(a) An employee in or under an agency who is newly appointed; or

(b) An individual not yet employed who has received a written offer to be newly appointed and has signed a written service agreement in accordance with § 575.106 prior to payment of the recruitment bonus.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Involuntarily separated refers to a separation initiated by an agency against the employee's will and without his or her consent for reasons other than cause on charges of misconduct or delinquency. An involuntary separation includes a separation resulting from the employee's actual inability to do the work following genuine efforts to do so, but does not include a separation under part 752 of this chapter or an equivalent procedure for reasons that involve culpable wrongdoing on the part of the employee. In addition, when an employee is separated because he or she declines to accept reassignment outside his or her commuting area, the separation is involuntary if the employee's position description or other

written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside his or her commuting area, but subsequently declines another such reassignment.

Newly appointed refers to—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government; or

(b) An appointment as an employee of the Federal Government following a break in service of at least 90 days from the candidate's last period of Federal employment, other than—

(1) Employment under the Student Educational Employment Program under § 213.3202;

(2) Employment as a law clerk trainee under § 213.3102(e) of this chapter;

(3) Employment while a student during school vacations under a short-term temporary appointing authority;

(4) Employment under a provisional appointment designated under § 316.403 if the new appointment is permanent and immediately follows the provisional appointment; or

(5) Employment under a temporary appointment that is neither full-time nor the principal employment of the candidate.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be newly appointed before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

Service agreement means a written agreement between an agency and a newly appointed employee under which the employee agrees to a specified period of employment with the appointing agency in return for payment of a recruitment bonus.

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37398, Aug. 19, 1992; 60 FR 33325, June 28, 1995; 61 FR 3543, Feb. 1, 1996; 64 FR 69181, Dec. 10, 1999]

§ 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.

(a) *Agency recruitment bonus plans.* (1) Before paying a recruitment bonus under this subpart, the head of an agency shall establish a recruitment bonus plan.

(2) A recruitment bonus plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of recruitment bonuses;

(ii) Criteria that must be met or considered in authorizing bonuses, including criteria for determining the amount of a bonus;

(iii) Procedures for paying bonuses;

(iv) Requirements for service agreements; and

(v) Documentation and record-keeping requirements sufficient to allow reconstruction of the action.

(b) *Higher level review and approval.*

(1) Except as provided in paragraph (b)(2) of this section, each determination to pay a recruitment bonus, including the amount of such bonus, shall be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(2) When necessary to make a timely offer of employment, a higher level official may establish criteria for offering recruitment bonuses in advance and authorize the recommending official to offer a recruitment bonus (in any amount within a pre-established range) to any candidate without further review or approval.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Such a determination shall be made before the employee actually enters on duty in the position for which he or she was recruited. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future and may make the required written determination to offer a recruitment bonus on a group basis.

(2) In determining whether a recruitment bonus should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

(i) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

(ii) Recent turnover in similar positions;

(iii) Labor-market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future;

(iv) Special qualifications needed for the position; and

(v) The practicality of using the superior qualifications appointment authority provided by 5 U.S.C. 5333 and § 531.203(b) of this chapter alone or in combination with a recruitment bonus.

[56 FR 12838, Mar. 28, 1991; 56 FR 14290, Apr. 8, 1991, as amended at 60 FR 33326, June 28, 1995]

§ 575.105 Payment of recruitment bonus.

A recruitment bonus shall be calculated as a percentage of the employee's annual rate of basic pay (not to exceed 25 percent) and paid as a lump sum. It shall not be considered part of an employee's rate of basic pay for any purpose.

[60 FR 33326, June 28, 1995]

§ 575.106 Service agreement.

(a) Before a recruitment bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified period of employment with the appointing agency (or successor agency in the event of a transfer of function).

(b) The minimum period of employment to be established under a service agreement for a recruitment bonus shall be 6 months.

[60 FR 33326, June 28, 1995]

§ 575.107 Repayment of recruitment bonus.

(a) Except as provided in paragraph (d) of this section, an employee who

fails to complete the period of employment established under a service agreement shall be indebted to the Federal Government and shall repay the recruitment bonus on a pro rata basis. The amount to be repaid shall be determined by providing credit for each full month of employment completed by the employee under the service agreement.

(b) Failure to complete the period of employment established under a service agreement occurs when the employee's service with the appointing agency terminates before the employee completes the period of employment specified in the service agreement.

(c) Amounts owed by an employee under paragraph (a) of this section shall be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and subpart K of part 550 of this chapter.

(d) Paragraph (a) of this section does not apply when an employee fails to complete a period of employment established under a service agreement because the employee is involuntarily separated.

(e) A right of recovery of an employee's debt under 5 U.S.C. 5514 may be waived in whole or in part by the head of the agency if he or she determines that recovery would be against equity and good conscience or against the public interest.

§ 575.108 Internal monitoring.

Each agency shall monitor the use of recruitment bonuses to ensure that its recruitment bonus plan conforms to the requirements established under this subpart and that the payment of recruitment bonuses conforms to the criteria established under this subpart.

[60 FR 33326, June 28, 1995]

§ 575.109 Records and reports.

(a) Each agency shall keep a record of each determination required by § 575.104(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular submission to OPM's Central Personnel Data File.

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(b) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of recruitment bonuses, each agency shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

Subpart B—Relocation Bonuses

§ 575.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a relocation bonus of up to 25 percent of the annual rate of basic pay to an employee who must relocate to accept a position in a different commuting area, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position.

[60 FR 33326, June 28, 1995]

§ 575.202 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a relocation bonus to an employee appointed to—

(1) A General Schedule position paid under 5 U.S.C. 5332;

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(4) A position as a law enforcement officer, as defined in § 550.103 of this chapter.

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate); or

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a relocation bonus to—

(1) The head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(2) An employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

(c) The head of an Executive agency may request that OPM authorize the payment of a relocation bonus to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.

(d) When OPM finds that an agency is not paying relocation bonuses in conformance with the agency's relocation bonus plan and the criteria established under § 575.204 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a relocation bonus to such employees; or

(2) Revoke or suspend the authority granted to the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM approval be secured before paying a relocation bonus to such employees.

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37398, Aug. 19, 1992; 58 FR 3201, Jan. 8, 1993; 58 FR 65537, Dec. 15, 1993; 64 FR 69181, Dec. 10, 1999; 66 FR 37883, July 20, 2001]

§ 575.203 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102.

Commuting area means the geographic area surrounding a work site that encompasses the localities where people live and reasonably can be expected to travel back and forth daily to work, as established by the employing agency based on the generally held expectations of the local community. When an employee's residence is within the standard commuting area for a work

site, the work site is within the employee's commuting area. When an employee's residence is outside the standard commuting area for a proposed new work site, the employee's commuting area is deemed to include the expanded area surrounding the employee's residence and including all destinations that can be reached via a commuting trip that is not significantly more burdensome than the current commuting trip. This excludes a commuting trip from a residence where the employee planned to stay only temporarily until he or she could find a more permanent residence closer to his or her work site. For this purpose, a commuting trip to a new work site is considered significantly more burdensome if it would compel the employee to change his or her place of residence in order to continue employment, taking into account commuting time and distance, availability of public transportation, cost, and any other relevant factors.

Employee means—

(a) An individual in the civil service (as defined in 5 U.S.C. 2101) who is relocated without a break in service upon appointment to a position in or under an agency in a different commuting area; or

(b) An employee in or under an agency whose duty station is changed permanently or temporarily to a different commuting area.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Involuntarily separated refers to a separation initiated by an agency against the employee's will and without his or her consent for reasons other than cause on charges of misconduct or delinquency. An involuntary separation includes a separation resulting from the employee's actual inability to do the work following genuine efforts to do so, but does not include a separation under part 752 of this chapter or an equivalent procedure for reasons that involve culpable wrongdoing on the part of the employee. In addition, when an employee is separated because he or she declines to accept assignment outside his or her commuting area, the separation is involuntary if the em-

ployee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside his or her commuting area, but subsequently declines another such reassignment.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is being relocated or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency at the new duty station to which relocated in return for payment of a relocation bonus.

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37398, Aug. 19, 1992; 60 FR 33326, June 28, 1995; 60 FR 35601, July 10, 1995; 61 FR 3543, Feb. 1, 1996; 64 FR 69182, Dec. 10, 1999]

§ 575.204 Agency relocation bonus plans; higher level review and approval; criteria for payment; and exceptions to case-by-case approval.

(a) *Agency relocation bonus plans.* (1) Before paying a relocation bonus under this subpart, the head of an agency shall establish a relocation bonus plan.

(2) A relocation bonus plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of relocation bonuses;

(ii) Criteria that must be met or considered in authorizing bonuses, including criteria for determining the size of a bonus;

(iii) Procedures for paying bonuses;

(iv) Requirements for service agreements; and

(v) Documentation and record-keeping requirements sufficient to allow reconstruction of the action.

(b) *Higher level review and approval.* Except as provided in paragraph (d) of this section, each determination to pay a relocation bonus, including the amount of such bonus, shall be reviewed and approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Each such determination shall be made before the employee actually enters on duty in the position to which he or she was relocated. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, except as provided in paragraph (d) of this section, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

(2) In determining whether a relocation bonus should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

- (i) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;
- (ii) Recent turnover in similar positions;
- (iii) Labor market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future; and
- (iv) Special qualifications needed for the position.

(d) *Exceptions to case-by-case approval.* The head of an agency may waive, for a specified period of time, the case-by-case approval requirement for any employee whose rating of record is at least Level 3 ("Fully Successful" or equivalent), when—

- (1) The employee is a member of a specified group of employees subject to a mobility agreement, and the head of the agency determines that relocation bonuses are necessary to ensure the

agency's ability to retain employees subject to such an agreement; or

- (2) A major organizational unit of the agency is relocated to a different commuting area, and the head of the agency determines that relocation bonuses are necessary for specified groups of employees to ensure the continued operation of that unit without undue disruption of an activity or function that is deemed essential to the agency's mission and/or without undue disruption of service to the public.

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37399, Aug. 19, 1992; 60 FR 33326, June 28, 1995]

§ 575.205 Payment of relocation bonus.

(a) A relocation bonus shall be calculated as a percentage of the employee's annual rate of basic pay and paid as a lump sum. Except as provided in paragraph (b) of this section, the amount of a relocation bonus may not exceed 25 percent of the employee's annual rate of basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) The amount of a relocation bonus may not exceed the greater of \$15,000 or 25 percent of a law enforcement officer's annual rate of basic pay in the case of—

- (1) A law enforcement officer, as defined in § 550.103 of this chapter, with respect to whom the provisions of chapter 51 of title 5, United States Code, apply;
- (2) A member of the United States Secret Service Uniformed Division;
- (3) A member of the United States Park Police;
- (4) A special agent within the Diplomatic Security Service;
- (5) A probation officer (referred to in section 3672 of title 18, United States Code); and
- (6) A pretrial services officer (referred to in section 3153 of title 18, United States Code).

(c) Before a relocation bonus may be paid to an employee, the employee must establish a residence in the new commuting area.

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37399, Aug. 19, 1992; 58 FR 3201, Jan. 8, 1993; 60 FR 33326, June 28, 1995; 64 FR 69182, Dec. 10, 1999]

Office of Personnel Management

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§ 575.206 Service agreement.

Before a relocation bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified period of employment with the appointing agency (or the successor agency in the event of a transfer of function) at the new duty station.

[60 FR 33327, June 28, 1995]

§ 575.207 Repayment of relocation bonus.

(a) Except as provided in paragraph (d) of this section, an employee who fails to complete the period of employment established under a service agreement shall be indebted to the Federal Government and shall repay the relocation bonus on a pro rata basis. The amount to be repaid shall be determined by providing credit for each full month of employment completed by the employee under the service agreement.

(b) Failure to complete the period of employment established under a service agreement occurs when the employee's service with the agency at the new duty station terminates before the employee completes the period of employment specified in the service agreement.

(c) Amounts owed by an employee under paragraph (a) of this section shall be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and subpart K of part 550 of this chapter.

(d) Paragraph (a) of this section does not apply when an employee fails to complete the period of employment established under a service agreement because the employee is involuntarily separated or because of a written determination by the head of the agency that it is necessary to relocate the employee to a position in a different commuting area.

(e) A right of recovery of an employee's debt under 5 U.S.C. 5514 may be waived in whole or in part by the head of the agency if he or she determines that recovery would be against equity and good conscience or against the public interest.

§ 575.208 Internal monitoring.

Each agency shall monitor the use of relocation bonuses to ensure that its relocation bonus plan conforms to the requirements established under this subpart and that the payment of relocation bonuses conforms to the criteria established under this subpart.

[60 FR 33327, June 28, 1995]

§ 575.209 Records and reports.

(a) Each agency shall keep a record of each determination required by § 575.204(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular submission to OPM's Central Personnel Data File.

(b) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of relocation bonuses, each agency shall maintain such other records and submit to OPM such other reports and data as OPM shall require.

Subpart C—Retention Allowances

§ 575.301 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5754, which authorizes payment of a retention allowance of up to 25 percent of basic pay to a current employee if the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee, and the agency determines that the employee would be likely to leave in the absence of a retention allowance.

§ 575.302 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a retention allowance to an employee who holds—

(1) A General Schedule position paid under 5 U.S.C. 5332;

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

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(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(4) A position as a law enforcement officer, as defined in § 550.103 of this chapter;

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate); or

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a retention allowance to the head of an agency, including an agency headed by a collegial body composed of two or more individual members.

(c) The head of an Executive agency may request that OPM authorize the payment of a retention allowance to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5754 or this subpart.

(d) When OPM finds that an agency is not paying retention allowances in conformance with the agency's retention allowance plan and the criteria established under § 575.305 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a retention allowance to such employees; or

(2) Revoke or suspend the authority granted to the the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM

approval be secured before paying a retention allowance to such employees.

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37399, Aug. 19, 1992; 58 FR 65537, Dec. 15, 1993; 59 FR 11701, Mar. 14, 1994; 60 FR 33327, June 28, 1995; 64 FR 69182, Dec. 10, 1999; 66 FR 37883, July 20, 2001]

§ 575.303 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102.

Employee means an employee in or under an agency.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37399, Aug. 19, 1992; 60 FR 33327, June 28, 1995; 61 FR 3543, Feb. 1, 1996]

§ 575.304 Conditions for payment.

(a) An agency may not begin payment of a retention allowance during a period of employment established under any service agreement required for payment of a recruitment bonus under subpart A of this part or relocation bonus under subpart B of this part. After retention allowance payments have commenced, a relocation bonus may be paid without affecting the payment of a retention allowance.

(b) An agency may pay a retention allowance to an employee if the employee is likely to leave the Federal service for any reason.

(c) An agency may not pay a retention allowance to an employee who is likely to leave his or her position for employment in the executive, legislative, or judicial branch of the Federal Government, whether in the same or a different agency.

(d) An agency may not offer a retention allowance to an individual (or authorize the payment of such an allowance) prior to the individual's employment with the agency.

[56 FR 12838, Mar. 28, 1991; 56 FR 40360, Aug. 14, 1991, as amended at 60 FR 33327, June 28, 1995; 60 FR 35601, July 10, 1995; 64 FR 71634, Dec. 22, 1999]

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

(a) Agency retention allowance plans.

(1) Before paying a retention allowance under this subpart, the head of an agency shall establish a retention allowance plan.

(2) A retention allowance plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of retention allowances;

(ii) Criteria that must be met or considered in authorizing allowances, including criteria for determining the size of an allowance;

(iii) Procedures for paying allowance; and

(iv) Documentation and record-keeping requirements sufficient to allow reconstruction of the action.

(b) Higher level review and approval. Each determination to pay a retention allowance, including the amount of such allowance, shall be reviewed and approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) Criteria for payment. (1) Each allowance paid under this subpart shall be based on a written determination that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that, in the absence of such an allowance, the employee would be likely to leave the Federal service.

(2) The determination required by paragraph (c)(1) of this section shall be based on a written description of the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a

function that is deemed essential to the agency's mission.

(3) In determining whether a retention allowance should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

(i) The success of recent efforts to recruit candidates and retain employees with qualifications similar to those possessed by the employee for positions similar to the position held by the employee; and

(ii) The availability in the labor market of candidates for employment who, with minimal training or disruption of service to the public, could perform the full range of duties and responsibilities assigned to the position held by the employee.

(d) Approval of retention allowances for groups or categories of employees. (1)(i) An agency may authorize a retention allowance of up to 10 percent of an employee's rate of basic pay for a group or category of employees (excluding individuals covered by § 575.302(a) (2), (3), (5), or (6) or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under § 575.302(c)) based on a written determination that the category of employees has unusually high or unique qualifications, or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance.

(ii) The determination that there is a high risk that a significant number of employees in the targeted category are likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

(iii) The targeted category should be narrowly defined using factors that relate to the conditions described in

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paragraph (d)(1)(i) of this section. Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique qualifications, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and performance level.

(While performance level may be a factor used in defining the targeted category, performance level by itself is not sufficient to justify a retention allowance. Performance level may function as a supporting factor in authorizing an allowance or setting the allowance rate only to the extent it directly relates to the conditions in paragraph (d)(1)(i).)

(2) Upon the request of the head of an agency, OPM may approve a retention allowance in excess of 10 percent, but not more than 25 percent, of an employee's rate of basic pay for a group of category or employees which meets the conditions specified in paragraph (d)(1) of this section. OPM may require that such requests be coordinated with other agencies having similarly situated employees in the same category. Group retention allowance requests must include—(i) A description of the group or category and number of employees to be covered by the proposed retention allowance;

(ii) A written determination that the group or category or employees meets the conditions specified in paragraph (d)(1) of this section;

(iii) The proposed percentage retention allowance payment and a justification for that percentage;

(iv) The expected duration of retention allowance payments; and

(v) Any other information pertinent to the case at hand.

(3) All other conditions and requirements for payment under this subpart must be met before a retention allowance may be paid to any individual employee under paragraphs (d)(1) or (d)(2) of this section.

[56 FR 12838, Mar. 28, 1991, as amended at 60 FR 33327, June 28, 1995; 63 FR 34121, June 23, 1998; 64 FR 71634, Dec. 22, 1999]

§ 575.306 Payment of retention allowance.

(a) A retention allowance shall be calculated as a percentage of the employee's rate of basic pay (not to exceed 25 percent) and paid in the same manner and at the same time as basic pay—i.e., the allowance shall be paid at an hourly rate for each hour during which the employee receives basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) The head of an agency may not authorize a retention allowance for an employee if or to the extent that such an allowance, when added to the employee's estimated aggregate compensation, as defined in 5 CFR 530.202, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the applicable aggregate limitation on pay under 5 CFR part 530, subpart B, at the end of the calendar year.

(c) Except as provided in § 575.307(a) of this part, an agency may continue payment of a retention allowance as long as the conditions giving rise to the original determination to pay the allowance still exist. However, at least annually, each determination to pay an allowance shall be reviewed by the agency to determine whether the payment is still warranted, and this determination shall be certified in writing by the approving official.

(d) A retention allowance is not pay for purposes of a lump-sum payment for annual leave under 5 U.S.C. 5551 or 5552.

[56 FR 12838, Mar. 28, 1991, as amended at 58 FR 50249, Sept. 27, 1993; 60 FR 33327, June 28, 1995; 69 FR 70367, Dec. 6, 2004]

§ 575.307 Reduction or termination of retention allowance.

(a) The agency must reduce or terminate the authorized amount of a retention allowance to the extent necessary to ensure that the employee's estimated aggregate compensation, as defined in 5 CFR 530.202, does not exceed the applicable aggregate limitation on pay under 5 CFR part 530, subpart B, at the end of the calendar year.

(b) The head of an agency may reduce or terminate payment of a retention allowance when it determines that—

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(1) A lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(2) Labor-market factors make it more likely (or reasonably likely) to recruit a candidate with qualifications similar to those possessed by the employee (or group or category of employees);

(3) The agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all); or

(4) Budgetary considerations make it difficult to continue payment at the level originally approved (or at all).

(c) The reduction or termination of a retention allowance may not be appealed. However, the preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or any of the laws referred to in 5 U.S.C. 2302(d).

[56 FR 12838, Mar. 28, 1991, as amended at 58 FR 50250, Sept. 27, 1993; 64 FR 69182, Dec. 10, 1999; 64 FR 71635, Dec. 22, 1999; 69 FR 70367, Dec. 6, 2004]

§ 575.308 Internal monitoring.

Each agency shall monitor the use of retention allowances to ensure that its retention allowance plan conforms to the requirements established under this subpart and that the payment of retention allowances conforms to the criteria established under this subpart.

[60 FR 33327, June 28, 1995]

§ 575.309 Records and reports.

(a) Each agency shall keep a record of each determination required by § 575.305(c) of this part and make such records available for review upon request by OPM. Each agency shall promptly submit a report of each such determination as a part of its regular submission to OPM's Central Personnel Data File.

(b) So that OPM can evaluate agencies' use of this authority and provide the Congress and others with information regarding the use of retention allowances, each agency shall maintain such other records and submit to OPM

such other reports and data as OPM shall require.

Subpart D—Supervisory Differentials

SOURCE: 56 FR 20338, May 3, 1991, unless otherwise noted.

§ 575.401 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5755, which authorizes payment of a supervisory differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule if one or more of the subordinate civilian employees would, in the absence of such a differential, be paid more than the supervisory employee.

§ 575.402 Delegation of authority.

(a) The head of an agency may pay a supervisory differential to a supervisor who is—

(1) In a General Schedule position paid under 5 U.S.C. 5332; and

(2) Responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if the continuing pay (as determined under § 575.405(d) of this part) of one or more of the subordinates would, in the absence of such a differential, be more than the continuing pay (as determined under § 575.405(c) of this part) of the supervisor.

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS-15 on the pay schedule applicable to the GS supervisor, including a schedule for any applicable locality rate of pay under 5 U.S.C. 5304, a special law enforcement adjusted rate of pay under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), or any applicable special rate of pay under 5 U.S.C. 5305.

[56 FR 20338, May 3, 1991, as amended at 57 FR 37394, Aug. 19, 1992; 58 FR 65537, Dec. 15, 1993; 61 FR 3543, Feb. 1, 1996]

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§ 575.403 Definitions.

In this subpart:

Agency has the meaning given that term in 5 U.S.C. 5102.

Continuing pay means the aggregate of all continuing payments and annual premium pay received by an employee at any one time.

Continuing payment means basic pay and any other form of pay that is paid in the same manner and at the same time as basic pay—i.e., for periods during which an employee receives basic pay.

Employee has the meaning given that term in 5 U.S.C. 5102.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509).

Supervisor has the meaning given that term in 5 U.S.C. 7103(a)(10).

[56 FR 20338, May 3, 1991, as amended at 57 FR 2435, Jan. 22, 1992; 61 FR 3543, Feb. 1, 1996]

§ 575.404 Use of authority.

(a) Each determination to pay a supervisory differential shall be made in writing under procedures established by each agency.

(b) The procedures established by each agency under paragraph (a) of this section shall provide that—

(1) Each determination to pay a supervisory differential, including the amount of such differential, shall be reviewed and approved by an official of the agency who is at higher level than the official who made the initial decision, unless there is no official at a higher level in the agency; and

(2) In determining whether to use the authority under 5 U.S.C. 5755 and this subpart and in determining the amount of such differential, the relationship in pay among supervisors under the Gen-

eral Schedule in the same organizational component of the agency shall be considered, as well as the relationship in pay between the supervisor and his or her subordinate(s).

(3) Each determination to pay a supervisory differential shall be documented.

§ 575.405 Calculation and payment of supervisory differential.

(a) A supervisory differential shall be calculated as a percentage of the supervisor's rate of basic pay or as a dollar amount and shall be paid in the same manner and at the same time as the supervisor's basic pay—i.e., the differential shall be paid at an hourly rate for each hour during which the supervisor receives basic pay.

(b) The amount of a supervisory differential shall not cause the supervisor's continuing pay, as determined under paragraph (c) of this section, to exceed the continuing pay of the highest paid subordinate not under the General Schedule, as determined under paragraph (d) of this section, by more than 3 percent.

(c) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the supervisor:

(1) Basic pay, including a retained rate of pay under 5 U.S.C. 5363 and part 536 of this chapter or other similar authority;

(2) A locality-based comparability payment under 5 U.S.C. 5304, a continued rate adjustment under subpart G of part 531 of this chapter, or a special pay adjustment for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509);

(3) A staffing differential under section 209 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509);

(4) A retention allowance under 5 U.S.C. 5754;

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(5) Any other continuing payment, except night, Sunday, or holiday premium pay or a hazardous duty differential under chapter 55 of title 5, United States Code;

(6) Premium pay paid on an annual basis under 5 U.S.C. 5545(c); and

(7) Availability pay under 5 U.S.C. 5545a.

(d) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the subordinate:

(1) Basic pay, excluding a night or environmental differential under 5 U.S.C. 5343(f) or part 532 of this chapter, respectively, or other similar authority and a retained rate of pay under 5 U.S.C. 5363 and part 536 of this chapter or other similar authority;

(2) A locality-based comparability payment under 5 U.S.C. 5304, a special law enforcement adjusted rate of pay under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), or another locality-based payment under similar authority, excluding a continued rate adjustment under subpart G of part 531 of this chapter;

(3) Any other continuing payment, except Sunday or holiday pay or another similar payment under title 5, United States Code, or other similar authority and a retention allowance under 5 U.S.C. 5754 or other similar authority; and

(4) Premium pay paid on an annual basis under an authority similar to 5 U.S.C. 5545(c).

(e) For the purpose of making any of the comparisons required by this subpart, continuing pay shall be calculated on an annual basis for both the supervisor and the subordinate.

(f) Payment of a supervisory differential is subject to the aggregate limitation on pay under 5 U.S.C. 5307 and subpart B of part 530 of this chapter.

(g) A supervisory differential shall not be considered part of the super-

visor's rate of basic pay for any purpose.

[56 FR 20338, May 3, 1991, as amended at 57 FR 2435, Jan. 22, 1992; 57 FR 37394, Aug. 19, 1992; 59 FR 66154, Dec. 23, 1994; 61 FR 3544, Feb. 1, 1996]

§ 575.406 Adjustment or termination of supervisory differential.

(a) An agency may establish procedures that allow for adjusting or terminating a supervisory differential at any time the agency determines it is appropriate to do so.

(b) A supervisory differential shall be terminated when the continuing pay of the supervisor (not including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule.

(c) A supervisory differential shall be reduced or terminated, as appropriate, when the continuing pay of the supervisor (including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule by more than 3 percent.

(d) The effective date of a reduction or termination of a supervisory differential under paragraph (b) or (c) of this section shall be not later than 30 calendar days after the date on which the event that necessitates the reduction or termination occurs.

(e) Each determination to adjust a supervisory differential shall be made in writing under procedures established by each agency similar to those established under § 575.404 of this part.

(f) The reduction or termination of a supervisory differential may not be appealed. However, the preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or under any of the laws referred to in 5 U.S.C. 2302(d).

[56 FR 20338, May 3, 1991, as amended at 57 FR 37394, Aug. 19, 1992]

§ 575.407 Records.

(a) Each agency shall keep a record of each determination required by §§ 575.404(a) and 575.406(e) of this part. Each record shall contain sufficient information to allow reconstruction of

the action, including the basis for determining the amount of the differential and the comparison of continuing pay required by § 575.405(b) of this part.

(b) Each agency shall promptly submit a report of each determination made to establish, adjust, or terminate a supervisory differential as a part of its regular submission to OPM's Central Personnel Data File.

Subpart E—Extended Assignment Incentives

SOURCE: 68 FR 53669, Sept. 12, 2003, unless otherwise noted.

§ 575.501 Purpose.

This subpart contains OPM regulations implementing 5 U.S.C. 5757, which authorizes the payment of extended assignment incentives. Subject to the requirements of this subpart, an agency may pay an extended assignment incentive to eligible Federal employees assigned to positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands who agree to complete a specified additional period of employment with the agency in that location.

§ 575.502 Definitions.

In this subpart:

Agency means an “Executive agency,” as defined in 5 U.S.C. 105.

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Employee means an employee of an agency who satisfies the definition of that term in 5 U.S.C. 2105.

Involuntarily reassigned refers to a reassignment initiated by an agency against an employee's will and without the employee's consent for reasons other than cause on charges of misconduct, delinquency, or inefficiency.

Involuntarily separated refers to a separation initiated by an agency against an employee's will and without the employee's consent for reasons other than cause on charges of misconduct, delinquency, or inefficiency. In addition, when an employee is separated because he or she declines to accept reassignment to another geographic area out-

side one of the covered locations, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside his or her particular territory, possession, or commonwealth, but subsequently declines another reassignment. An employee's separation as a result of disability retirement, a disability that prevents an employee from continuing Federal service or is the basis for separation by the agency as determined by acceptable medical evidence, or the death of an employee is considered to be an involuntary separation.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before deductions and exclusive of additional pay of any kind. For example, a rate of basic pay may not include nonforeign area cost-of-living allowances under 5 U.S.C. 5941, night shift differentials under 5 U.S.C. 5343(f), or environmental differentials under 5 U.S.C. 5343(c)(4).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency in a particular territory, possession, or commonwealth in return for payment of an extended assignment incentive.

Service period means an agreed-upon period of employment an employee is obligated to complete under a service agreement.

Territory, possession, or commonwealth means a territory or a possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

§ 575.503 Who may approve the payment of an extended assignment incentive?

An authorized agency official must review and approve the offer of an extended assignment incentive for an employee, including the amount of such incentive. The authorized agency official must be at a higher level than the official who made the initial decision

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to offer an extended assignment incentive, unless there is no official at a higher level in the agency.

§ 575.504 What requirements must an agency satisfy before authorizing the payment of an extended assignment incentive?

Before paying an extended assignment incentive under this subpart, an agency must establish an extended assignment incentive plan. This plan must include the following elements:

(a) The designation of authorized agency officials who must review and approve the payment of extended assignment incentives;

(b) The categories of employees which are prohibited from receiving an extended assignment incentive;

(c) The criteria that must be met or considered in authorizing extended assignment incentives, including criteria for determining the size of an incentive;

(d) The requirements governing service agreements, including the obligations of the agency and the employee when the service period is not completed;

(e) The procedures for paying extended assignment incentives; and

(f) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

§ 575.505 What criteria must an agency use to determine who will receive an extended assignment incentive?

(a) An agency must base the payment of an extended assignment incentive on a written determination that—

(1) The eligible employee has completed at least 2 years of continuous service immediately before the commencement of the service agreement in one or more civil service positions located in a particular territory, possession, or commonwealth;

(2) It is in the best interest of the Government to encourage the employee to complete a specified additional period of employment with the agency in that location; and

(3) Replacing the employee with another employee possessing the required qualifications and experience would be difficult.

(b) In determining whether it is in the best interest of the Government to

retain an employee under paragraph (a)(2) of this section, an agency may consider how the employee's departure would affect the agency's ability to operate effectively or to carry out an activity or perform a function which the agency deems essential to its mission.

(c) Any determination to approve an extended assignment incentive must be made on a case-by-case basis for each employee. However, an agency may consider common factors that apply to a category of employees, such as past recruitment and retention problems or the anticipation of such problems in the future.

§ 575.506 When is an agency prohibited from paying an extended assignment incentive?

(a) An extended assignment incentive may not be paid to the head of an agency, including an agency headed by a collegial body composed of two or more individual members.

(b) An agency may not begin paying an extended assignment incentive to an otherwise eligible employee who is fulfilling the requirements of a service agreement for the payment of a recruitment or relocation bonus or who is receiving a retention allowance. (See 5 CFR part 575, subparts A, B, and C.)

§ 575.507 What is the maximum extended assignment incentive that may be paid for a period of service?

(a) The total amount of extended assignment incentive payments that may be paid for a service period may not exceed the greater of—

(1) An amount equal to 25 percent of the annual rate of basic pay of the employee at the beginning of the service period times the number of years (including fractions of a year) in the service period; or

(2) \$15,000 per year (including fractions of a year) in the service period.

(b) For hourly rate employees who do not have a scheduled annual rate of basic pay, the annual rate in paragraph (a) of this section is computed by multiplying the applicable hourly rate in effect at the beginning of the service period by 2,087 hours.

(c) The number of years in the service period is computed by dividing the total number of calendar days in the

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service period (as established under § 575.510(a)) by 365 and rounding the result to two decimal places. For example, a service period covering 39 bi-weekly pay periods equals 546 days, and 546 days divided by 365 days equals 1.50 years.

§ 575.508 What is the maximum amount of service that may be covered by an extended assignment incentive?

An employee's total service under one or more extended assignment incentive service agreements with a particular agency for service in a particular territory, possession, or commonwealth may not exceed 5 years. For this purpose, a year is equal to 365 days, resulting in a total service limit of 1,825 days.

§ 575.509 Is an extended assignment incentive considered basic pay for any purpose?

No, an extended assignment incentive is not considered part of an employee's rate of basic pay for any purpose, nor is it included for the purpose of calculating a lump-sum payment for annual leave under 5 CFR 550.1205.

§ 575.510 What requirements are associated with service agreements?

(a) Before paying an extended assignment incentive, the agency must require the employee to sign a written service agreement to complete a specified period of employment with the agency in a particular territory, possession, or commonwealth. The service period must meet the following conditions:

(1) The service period must begin on the first day of a pay period and end on the last day of a pay period; and

(2) The service period must not cause an employee to exceed the 5-year lifetime limitation described in § 575.508.

(b) In addition to the service requirement in paragraph (a) of this section, the service agreement may specify other terms and conditions of employment applicable to the employee. For example, the service agreement may specify the employee's work schedule, type of position, and performance level. In addition, the service agreement may address the extent to which periods of time on a detail, in a nonpay

status, or in a paid leave status are creditable towards the completion of the service period.

(c) The service agreement must specify the method of payment of an extended assignment agreement. The agency may choose to pay an extended assignment incentive in an initial lump-sum payment at the beginning of the service period, in installments at the end of specified periods throughout the service period (biweekly, monthly, quarterly, etc.), in a lump-sum payment at the end of the entire service period, or through a combination of payment methods.

(d) The service agreement must include the conditions under which the employee would be required to repay an extended assignment incentive under § 575.513.

(e) The service agreement must specify the conditions under which the payment of an extended assignment incentive may be terminated by the agency under § 575.512.

(f) The service agreement must specify the conditions under which the agency may be obligated to pay an additional incentive payment for partially completed service, as provided in § 575.513(d).

(g) The service agreement must specify the conditions under which the agency may impose a repayment penalty under § 575.513(e) for an employee who fails to fulfill the terms of the service agreement.

(h) The service agreement must specify the conditions under which the agency may be obligated to pay an incentive payment attributable to some or all of the employee's *uncompleted* service for employees covered by § 575.511 or § 575.512.

§ 575.511 What happens when an employee is involuntarily separated or involuntarily reassigned prior to completion of the service period?

An employee who is involuntarily separated or is involuntarily reassigned to a position outside the particular territory, possession, or commonwealth involved is not indebted to the Federal Government for any extended assignment incentive payments he or she has received. The employee is entitled to keep all incentive payments

received and, if applicable, is entitled to receive any additional amount representing the difference between the amount received and the prorated share of the total incentive attributable to completed service. The employee may receive a portion or all of the incentive payment attributable to uncompleted service only to the extent provided in the service agreement.

[68 FR 53669, Sept. 12, 2003; 68 FR 56665, Oct. 1, 2003]

§575.512 When may an agency terminate a service agreement?

(a) An agency may unilaterally terminate a service agreement based solely on the business needs of the agency. For example, an authorized agency official may terminate a service agreement when the employee's position is affected by a reduction in force or when there are insufficient funds to continue the planned incentive payments.

(b) If an agency terminates a service agreement under paragraph (a) of this section, the employee is entitled to keep all incentive payments received and, if applicable, is entitled to receive any additional amount representing the difference between the amount received and the prorated share of the total incentive attributable to completed service. The employee may receive a portion or all of the incentive payment attributable to uncompleted service only to the extent provided in the service agreement.

§575.513 What are the agency's and the employee's obligations when an employee fails to fulfill the terms of a service agreement?

(a) This section does not apply when an employee is involuntarily separated or involuntarily reassigned to a position outside the particular territory, possession, or commonwealth involved, as provided in §575.511 or when an agency unilaterally terminates a service agreement under §575.512.

(b) An employee is indebted to the Federal Government and must repay the paying agency for an appropriate portion of an extended assignment incentive received by the employee if—

(1) The employee fails to complete the period of employment required in his or her service agreement; or

(2) The employee violates any other condition specified in the service agreement that would trigger termination of the agreement.

(c)(1) If an employee does not fulfill the terms of a service agreement under the circumstances prescribed in paragraph (b) of this section and has received incentive payments whose value as a percentage of the planned total sum of incentive payments for the entire service period exceeds the percentage reflecting the portion of the service period completed by the employee, he or she must repay the excess payment and any additional repayment penalty imposed by the agency under paragraph (e) of this section.

(2) For example, consider an employee who signed a 364-day (26 pay period) service agreement and received the full amount of the extended assignment incentive as an initial lump-sum payment. If the employee voluntarily leaves after 20 pay periods (280 days), the employee will have received 100 percent of the total extended assignment incentive while completing only 76.9 percent (280/364) of the service period. The excess is 23.1 percent. Therefore, the employee must repay 23.1 percent (84/364) of the incentive. The employee is entitled to keep 76.9 percent of the incentive, unless the agency imposes an additional repayment penalty for failure to fulfill the service agreement under paragraph (e) of this section.

(d)(1) If an employee does not fulfill the terms of the service agreement under the circumstances prescribed in paragraph (b) of this section and has received incentive payments whose value as a percentage of the planned total sum of incentive payments for the entire service period is less than or equal to the percentage reflecting the portion of the service period completed by the employee, the employee has no repayment obligation unless the agency imposes an additional repayment penalty under paragraph (e) of this section. The agency may pay an additional incentive payment for some or

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all of the service completed by the employee if such additional payment is required by the service agreement. The total amount of incentive payments received by the employee may not exceed the prorated share of the planned incentive attributable to completed service.

(2) For example, consider an employee who signed a 364-day (26 pay period) service agreement to receive a total extended assignment payment of \$24,501 in two equal installment payments—i.e., \$12,250.50 at the end of 13 pay periods of completed service and \$12,250.50 at the end of the required service period. If the employee voluntarily leaves after 20 pay periods (280 days), the employee will have received only 50 percent of the total extended assignment incentive while completing 76.9 percent (280/364) of the service agreement. The agency may pay the employee an additional amount of up to 26.9 percent of the incentive payment that is attributable to completed service, as allowed under the terms of the service agreement, assuming the agency does not impose an additional repayment penalty for failure to fulfill the service period under paragraph (e) of this section.

(e) An agency may impose an additional repayment penalty on an employee who does not fulfill the terms of a service agreement. This repayment penalty is in addition to any repayment required by paragraph (c) of this section. The specific terms and conditions governing the repayment penalty must be included in the service agreement. For example, an agency may adopt a schedule or formula that provides for varying penalty amounts based on the portion of the service period completed by the employee.

(f) If an employee fails to reimburse the paying agency for the full amount owed under this section, the amount outstanding must be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions for debt collection if the individual is no longer a Federal employee. However, the head of the agency may

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waive the debt under 5 U.S.C. 5584, if warranted.

[68 FR 53669, Sept. 12, 2003, as amended at 69 FR 33536, June 16, 2004]

§ 575.514 What are an agency's monitoring responsibilities?

Each agency must monitor the use of extended assignment incentives to ensure that the agency's extended assignment incentive plan and the payment of extended assignment incentives are consistent with the requirements and criteria established under 5 U.S.C. 5757 and this subpart.

§ 575.515 What records and reports are required?

(a) Each agency must keep a record of each determination required by this subpart and make such records available for review upon OPM's request.

(b) Each agency must provide any information requested by OPM for its report to Congress, as required by 5 U.S.C. 5757(d). Before February 15, 2006, each agency must submit a written report to OPM on—

(1) The agency's use of extended assignment incentives by providing the data required in paragraph (c) of this section;

(2) Whether the use of extended assignment incentives influenced employees to stay longer than their initial tour of duty at their current duty stations; and

(3) The agency's recommendations for changes necessary to improve the effectiveness of extended assignment incentives.

(c) Each agency report must contain the following data for the period from May 2, 2003, to December 31, 2005:

(1) The number of extended assignment service agreements that commenced in each fiscal year;

(2) The dollar amount expended on extended assignment incentives in each fiscal year;

(3) The number of employees who declined an extended assignment incentive, by occupational series and geographic location;

(4) The number of employees who signed an extended assignment incentive service agreement, the total amount of the planned incentives, and the total number of years of agreed-

upon service, by occupational series and geographic location;

(5) The number of employees whose service agreements were terminated before completion of the agreed-upon service period, with subcounts showing the number covered by § 575.511, § 575.512, and § 575.513, respectively.

(6) The number of employees who incurred a repayment debt under § 575.513 (including any repayment penalty under § 575.513(e)) and the total amount of repayment debt incurred; and

(7) The portion of the repayment debt that, as of December 31, 2005—

- (i) Has been recovered;
- (ii) Is subject to ongoing collection efforts; and
- (iii) Has been waived or written off.

PART 576—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Subpart A—Voluntary Separation Incentive Payments

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AUTHORITY: 5 U.S.C. 3521, 3522, 3523, 3524, and 3525.

SOURCE: 68 FR 5529, Feb. 4, 2003, unless otherwise noted.

Subpart A—Voluntary Separation Incentive Payments.

§ 576.101 Definitions.

Section 3521(1) of title 5, United States Code, contains the definition of *Agency*, and section 3521(2) of title 5, United States Code, contains the definition of *Employee*, as used in this subpart.

§ 576.102 Voluntary separation incentive payment implementation plans.

(a) Section 3522 of title 5, United States Code, specifies the information that the head of an agency must submit to the Office of Personnel Management (OPM). OPM will consult with the Office of Management and Budget (OMB) regarding the plan and will notify the agency head in writing when the plan is approved. The agency must have OPM approval before offering incentives under this authority.

(b) In submitting a plan to OPM under section 3522(a) of title 5, United States Code, the head of an agency may submit:

(1) A specific voluntary separation incentive payment implementation plan outlining the intended use of the incentive payments, or

(2) The agency's human capital plan, which outlines the intended use of the incentive payments and the expected changes in the agency's organizational structure after the agency has completed the incentive payments.

(c) In either case, the plan must include:

(1) Identification of the specific positions and functions to be reduced or eliminated, identified by organizational unit, geographic location, occupational category, grade level and any other factors related to the position, such as skills and knowledge;

(2) A description of the categories of employees who will be offered incentives identified by organizational unit, geographic location, occupational category, grade level and any other factors, such as skills, knowledge, or retirement eligibility;

(3) The time period during which incentives may be paid;

(4) The number and maximum amounts of voluntary separation incentive payments to be offered;

(5) A description of how the agency will operate without the eliminated or restructured positions and functions;

(6) A proposed organizational chart displaying the expected changes in the agency's organizational structure after the agency has completed the incentive payments; and

(7) If the agency has requested, or will request Voluntary Early Retirement Authority, a description of how